

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARIO CLARKE,

Plaintiff,

CIVIL ACTION NO. 09-11246

vs.

DISTRICT JUDGE BERNARD A. FRIEDMAN  
MAGISTRATE JUDGE DONALD A. SCHEER

RANDY UMBERGER, et.al.,

Defendants.

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ORDER DENYING PLAINTIFF'S APPLICATION FOR APPOINTMENT OF COUNSEL

This cause comes before the Court on Plaintiff's Application For Appointment of Counsel dated June 2, 2009, (Docket #17). The decision to appoint counsel for an indigent litigant is within the discretion of the district court. LaBeau v. Dakota, 815 F.Supp. 1074, 1076 (W.D. Mich. 1993) (citing Henry v. City of Detroit Manpower Dept., 763 F.2d 757, 760 (6th Cir. 1985), cert. denied, 474 U.S. 1036 (1985)). Appointment of counsel is not a constitutional right. Childs v. Pellegrin, 822 F.2d 1382, 1384 (6th Cir. 1987). This discretion rests upon a consideration of all the circumstances of the case, including the plaintiff's finances, his efforts to obtain counsel, and most importantly, whether the plaintiff's case appears to be meritorious. Henry at 760.

The Court has no funds to pay attorney fees for an indigent litigant in civil matters. Eight of the nine named defendants were successfully served with a summons and complaint on May 21, 2009, and the Michigan Attorney General's Office filed a Notice of Appearance on their behalf on May 27, 2009 (Docket #7-15). No Answer to the Complaint has been filed. Appointment of counsel would be premature until service is completed and

the viability of Plaintiff's claim is determined. Accordingly, Plaintiff's Application for Appointment of Counsel is DENIED.

The parties to this action may object to and seek review of this Order but are required to act within ten (10) days of service of a copy hereof as provided for in Fed.R.Civ.P. 72(a) and E.D.Mich.LR 72.1(d)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. Fed.R.Civ.P. 72. Filing of objections that raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Order. Pursuant to E.D. Mich. LR 72.1(d)(1), a copy of any objection is to be served upon this Magistrate Judge.

SO ORDERED.

s/Donald A. Scheer  
DONALD A. SCHEER  
UNITED STATES MAGISTRATE JUDGE

DATED: June 8, 2009

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### CERTIFICATE OF SERVICE

I hereby certify on June 8, 2009 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on June 8, 2009: **Mario Clarke.**

s/Michael E. Lang  
Deputy Clerk to  
Magistrate Judge Donald A. Scheer  
(313) 234-5217